Honorable Samuel J. Steiner
Chapter 11
Hearing Date: November 12, 2010
Hearing Time: 9:30 a.m.
Hearing Place: Seattle, WA
Response Date: November 5, 2010

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re ADAM R. GROSSMAN, Debtor.	No. 10-19817-SJS DECLARATION OF TEREZA SIMONYAN IN SUPPORT OF MOTION FOR ORDER FOR DISGORGEMENT OF FEES

Tereza Simonyan declares as follows:

1. I am one of the attorneys of record for Jill Borodin, a creditor in the above Chapter 11 case, and the person moving for an order disgorging the fees of Emily Tsai. I am over the age of 18 years, have personal knowledge of the facts stated herein, and am competent to testify to them.

2. On August 19, 2010 Adam R. Grossman ("Debtor") commenced a Chapter 11 bankruptcy proceeding.

3. On September 28, 2010, I attended the Debtor's 341 meeting of creditors and asked him a set of questions regarding his employment of Emily Tsai.

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4. The Debtor stated that on September 16, 2010, he had retained Ms. Tsai to represent him in his dissolution proceeding pending in the Superior Court of Washington in King County Case Number 09-3-02955-9 SEA.

5. The Debtor stated that he had paid Ms. Tsai a retainer of $7,500, with funds that he had borrowed from friends and family members.

6. William Courshon, the attorney for the United States Trustee conducting the 341 meeting of creditors, informed the Debtor during the 341 meeting of creditors that the Debtor was required to have Emily Tsai's employment as special counsel approved by the Bankruptcy Court. The Debtor's bankruptcy counsel assured Mr. Courshon that he intended to comply with such requirement.

7. Attached as **Exhibit A** is a true and correct copy of the Legal Memorandum Supporting Motion to Quash filed in the state court dissolution proceeding on October 10, 2010.

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8. Attached as **Exhibit B** is a true and correct copy of the Wife's Strict Reply in Support of Motion to Quash and for Other Relief filed in the state court dissolution proceeding on October 10, 2010.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 19th day of October, 2010.

/s/Tereza Simonyan
Tereza Simonyan

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

In re the Marriage of: JILL IRINA BORODIN, Petitioner, and ADAM REED GROSSMAN, Respondent.	NO. 09-3-02955-9 SEA **LEGAL MEMORANDUM SUPPORTING MOTION TO QUASH**

COMES NOW the Petitioner/Wife, Jill I. Borodin, by and through her attorney of record, Karma L. Zaike of Michael W. Bugni & Associates, PLLC, and provides the following legal memorandum regarding the Wife's pending motion to quash and for other relief:

CR 26(b)(1) allows the court to limit "unduly burdensome or expensive" discovery. CR 26(b) allows only discovery regarding "subject matter involved in the pending action." It also allows that discovery "***shall be limited***" if the court determines that discovery is "unduly burdensome or expensive taking into account the needs of the case…limitations on

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the parties' resources, and the importance of the issues at stake in the litigation." Mr. Grossman has filed bankruptcy. He does not deny he is significantly behind in his support obligations. Mr. Grossman has defrauded the bankruptcy court by failing to disclose assets, entering into contracts to increase his debt, and employing an attorney without the court's approval. Given that the witnesses at issue do not have evidence that will meaningfully assist the court at trial, these depositions are a waste of resources and should not be allowed.

CR 45 is controlling for subpoenas. There is no CR 37 conference required for subpoenas issued pursuant to CR 45. Even if there were, counsel has conferred and there is an impasse regarding whether the subpoenas should be quashed. Mr. Grossman's testimony strongly supports that the purpose of the depositions is to collaterally attack the DVPO or address financial matters about which none of the lay witnesses has any evidence. CR 45(c)(3)(A) allows the court to "quash or modify the subpoena if it...subjects a person to undue burden..." The depositions are unreasonable and oppressive because they needlessly increase Petitioner's attorney's fees for depositions which will not produce relevant evidence at trial. The depositions are unreasonable and oppressive to the deponents because they are needlessly subjected to a legal proceeding when they have no evidence which will assist the court in deciding the issues which will be addressed at trial.

Husband's intentional violation of Federal Bankruptcy Law may result in his receiving substantial, additional free legal representation. **11 U.S.C. § 327(e)**[1] allows a

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[1] **11 U.S.C. § 327(e) Employment of professional persons.** The trustee, with the court's approval, may employ,

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person in bankruptcy to employ a professional person (e.g. divorce lawyer) only with the "court's approval." Ms. Tsai, as an officer of the court, has violated her ethical duty of candor to a tribunal by accepting funds from Mr. Grossman without the bankruptcy court's approval and failing to file with the court a "statement of the compensation paid"[2] in the bankruptcy proceeding. There is a high likelihood that Ms. Tsai will be ordered by the bankruptcy court to "disgorge" all legal fees she has improperly received. If that happens, Mr. Grossman has succeeded in his ongoing abusive tactics by forcing the wife to incur substantial attorney's fees that he does not have to pay.

Court has authority to limit Respondent's ability to litigate. "Implicit in the right of access to the court is a requirement that the litigants also proceed in good faith and in compliance with court rules...[if] access is to be guaranteed at all, it must be limited as to those who abuse it." *In re Marriage of Giordano*, 57 Wn.App. 74, 77-78 (1990). Mr. Grossman has already received over $32,000 in free legal representation. The bankruptcy court may require that Ms. Tsai disgorge any fees she received in violation of bankruptcy law, so Mr. Grossman will have received at least $7,500 in additional, free legal representation. Meanwhile, the court has found that Mr. Grossman's intransigence has led to increased legal fees for Rabbi Borodin which he has failed to pay.

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for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

[2] **11 U.S.C. § 329 Debtor's transactions with attorneys.**

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Bankruptcy law also provides that Rabbi Borodin's claim for unpaid expenses under the temporary order will take priority as a "domestic support obligation."[3] Due to Mr. Grossman's multiple failures in complying with the orders, he has pushed the Wife to the brink of financial ruin. The Wife's request that Mr. Grossman pay outstanding judgments before additional fees are incurred simply mirrors bankruptcy law requiring that the domestic support obligations take priority over other obligations.

Conclusion. As with all of her requests to the court, the Wife's requests are in full compliance with all statutory requirements and court rules. The same cannot be said of Mr. Grossman's tactics which remain consistent with findings in prior orders. The Wife respectfully requests that her order be entered as presented.

RESPECTFULLY SUBMITTED this 10th day of October, 2010.

KARMA L. ZAIKE, WSBA # 31037
Attorney for Petitioner/Wife

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[3] **11 USC § 507. Priorities.** (a) The following expenses and claims have priority in the following order: (1) First: (A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor…"

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

In re the Marriage of: JILL IRINA BORODIN, Petitioner, and ADAM REED GROSSMAN, Respondent.	)))))))))	NO. 09-3-02955-9 SEA **WIFE'S STRICT REPLY IN SUPPORT OF MOTION TO QUASH AND FOR OTHER RELIEF**

JILL I. BORODIN, on oath, certifies and declares as follows:

1. **Court has repeatedly found Adam to have acted with intransigence**: It is shocking and alarming to read Adam's declaration in which he fails to recognize or take responsibility for his abusive tactics. There are multiple orders corroborating my testimony:

- **Order striking Adam's third motion for financial relief, 4/9/2010**: Adam's improper motion is stricken and the court orders that "The Husband is prohibited from refiling until he has fully and completely complied with LFLR 10."
- **Order compelling discovery, 5/28/2010**: Wife's motion to compel GRANTED and attorney's fees awarded.
- **Findings and Order Dissolving Temp DVPO, 7/27/2010.**
    - "Adam Grossman, provided materially misleading information to the court…"
    - "…Petitioner Grossman's motion was frivolous and intended to harass."
    - "The court finds that Mr. Grossman's allegations are not credible and the entry of the [temporary DVPO] was abusive use of conflict and [was] an attempt to harass."

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- **Temporary Order for Protection, 7/27/2010**. Page 5, "Mr. Grossman appeared and provided testimony. The court finds that the computer theft and hacking show a pattern of behavior that Mr. Grossman presents a credible risk to the safety of the Wife and children."

- **Order for protection, 8/31/2010:** Page 6, "The court finds that respondent engaged in domestic violence…Mr. Grossman asserts power and control in his behavior. The court finds that the mother is fearful and that her fear is reasonable."

The orders clearly show that Adam has consistently and over a period of time been found to have acted abusively and with intransigence. In fact, I have prevailed on every motion brought before the court to date.

2. **Testimony for DVPO should not be confused with witness testimony which may occur at trial**. Adam's response states, "There is a 41 page parenting evaluation with recommendations as to the children's best interests *contrary to* current court actions. The husband has the right to inquire, through counsel, into these allegations." This statement is an error of law. The court has already entered a final order under 26.50 finding that "Respondent committed domestic violence…and represents a credible threat…" The court went on to restrict Adam's residential time pursuant to 26.09.191. The issue of domestic violence and the children's residential schedule through August 31, 2011 is res judicata. Adam was represented by an attorney and had the opportunity to conduct discovery prior to the entry of the DVPO. While the trial court will enter a parenting plan at trial, it must be consistent with the provisions in the DVPO, thus the issues before the trial court will be very limited. He cannot now attempt to collaterally attack that order at trial.

3. Only Sam Perlin and Ronald Schneeweiss have filed declarations and both were related to the 26.50 DVPO proceedings. Neither has submitted testimony, nor will they, for the

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dissolution proceeding. No other subpoenaed witness has filed a declaration. Notably, Adam is not seeking to depose Ms. Shanks. Both Adam and Ms. Shanks have been notified that I have withdrawn her name as a trial witness because there is a final order in effect for the next year as to the children's residential schedule and domestic violence. **Not a single lay witness to be deposed could provide useful evidence at trial.** My primary witness list identifying any of these individuals was submitted in late July, prior to the court's entry of the permanent DVPO on August 31. Adam was notified as soon as witnesses started being served that the named individuals were withdrawn from my side. Adam has made no offer of proof as to how any witness has information relevant for a trial issue. Adam has already caused a needless increase in cost by scheduling multiple depositions without contacting my attorney.

4. **Financial allegations are not relevant to the pending depositions**. Adam's declaration rants about financial issues that, as things currently stand, cannot be addressed at trial. He falsely states that the order restrains him from conducting any business. Even if everything he said were true, the depositions would not be appropriate. The DVPO limits Adam's ability to "discuss any issues arising out of or related to this case with any congregant...or the Early Childhood Center. Congregants on the witness List may be questioned regarding the scope of their testimony." None of the remaining witnesses have any financial knowledge and Adam's witness list doesn't identify the scope of their testimony as financial.

5. **Factual basis for limitation of Wife's deposition**. The issues for trial are presently very narrow and no extended deposition should be necessary. I have always been extremely cooperative with the discovery process and a long deposition is not necessary. For

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example, my interrogatory answers were so complete, there was not one response which was noted as deficient. In contrast, several orders have recognized Adam's intransigence.

6. **Material misrepresentation of fact before Judge Cahan.** A hearing was required on shortened notice because Ms. Tsai refused to extend depositions to allow for a six day motion. At the time the motion was noted last Wednesday, there were three depositions noted on Thursday (Irit Eliav and myself) and Friday (Ron Schneeweise). By the time that the hearing occurred, Ms. Tsai had agreed to move one of the three depositions (Ms. Eliav). She refused to move my deposition scheduled for Thursday, even though she knew I was out of town grieving the death of my grandmother. Ms. Tsai materially misrepresented to the court that Mr. Schneeweiss was not scheduled for Friday. After the hearing, Ms. Tsai admitted this was a material misrepresentation of fact. **See Supplemental Declaration of E. Tsai, page 3.**

7. **Attorney's fees**. Attached to my prior declaration, I attached a summary showing that Adam was "$37,655.72" in arrears in temporary support obligations.[1] Adam does not deny that he is in arrears, and in fact, takes issue with only one payment I've named for just over one-thousand dollars. Adam's assertion that the court cannot enforce its order requiring payment of domestic obligations because of bankruptcy is false. Furthermore, Adam and Ms. Tsai have colluded to defraud the bankruptcy court by failing to get the court's permission prior to payment for representation. That conduct should not be tolerated by the court. Ms. Tsai knew of the bankruptcy filing before taking Adam's money and had a duty of candor as an officer of the court. In fact, she has violated her ethical duty to the courts by secretly and in violation of

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bankruptcy law accepting payment from Adam. If the court condones this conduct, it will continue to happen. Adam has had at least four divorce lawyers formally appear and has paid others. He's had additional bankruptcy lawyers. While Adam has been out paying his lawyers, I have been solely making sure that his court ordered obligations and my own (including his health and auto insurance) remain in good standing. I am at the breaking point. I cannot afford to pay my attorney to attend depositions which have no possibility of producing relevant evidence at trial. I am in desperate need of relief and request that the court limit Adam's ability to continue with abusive tactics.

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing statement is true and correct.

DATED: October 10, 2010

JILL BORODIN, Petitioner/mother

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[1] See **Exhibit 2** to October 6, 2010 Declaration of Jill Borodin.

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